

## Federal Deposit Insurance Corporation

## § 362.16

bank” and “subsidiary” in § 362.4(d)(5) shall be deemed to refer, respectively, to the insured state savings association and the service corporations or subsidiaries.

(d) *Capital requirements.* If specifically required by this part or by FDIC order, an insured state savings association that wishes to conduct as principal activities through a service corporation which are not permissible for a service corporation of a Federal savings association must:

(1) Be well-capitalized after deducting from its capital any investment in the service corporation, both equity and debt.

(2) Use such regulatory capital amount for the purposes of the insured state savings association’s assessment risk classification under part 327 of this chapter.

[63 FR 66326, Dec. 1, 1998, as amended at 66 FR 1029, Jan. 5, 2001]

### § 362.13 Approvals previously granted.

*FDIC consent by order or notice.* An insured state savings association that previously filed an application and obtained the FDIC’s consent to engage in an activity or to acquire or retain an investment in a service corporation engaging as principal in an activity or acquiring and retaining any investment that is prohibited under this subpart may continue that activity or retain that investment without seeking the FDIC’s consent, provided the insured state savings association and the service corporation, if applicable, continue to meet the conditions and restrictions of approval. An insured state savings association which was granted approval based on conditions which differ from the requirements of §§ 362.4(c)(2) and 362.12 (c) and (d) will be considered to meet the conditions and restrictions of the approval if the insured state savings association and any applicable service corporation meet the requirements of §§ 362.4(c)(2) and 362.12 (c) and (d). For the purposes of applying § 362.4(c)(2), references to the terms “eligible subsidiary” and “subsidiary” in § 362.4(c)(2) shall be deemed to refer, respectively, to the eligible service corporation and the service corporation.

## Subpart D—Acquiring, Establishing, or Conducting New Activities Through a Subsidiary by an Insured Savings Association

### § 362.14 Purpose and scope.

This subpart implements section 18(m) of the Federal Deposit Insurance Act (12 U.S.C. 1828(m)) which requires that prior notice be given the FDIC when an insured savings association establishes or acquires a subsidiary or engages in any new activity in a subsidiary. For the purposes of this subpart, the term “subsidiary” does not include any insured depository institution as that term is defined in the Federal Deposit Insurance Act. Unless otherwise indicated, the definitions provided in § 362.2 apply to this subpart.

### § 362.15 Acquiring or establishing a subsidiary; conducting new activities through a subsidiary.

No state or Federal insured savings association may establish or acquire a subsidiary, or conduct any new activity through a subsidiary, unless it files a notice in compliance with § 303.142(c) of this chapter at least 30 days prior to establishment of the subsidiary or commencement of the activity and the FDIC does not object to the notice. This requirement does not apply to any Federal savings bank that was chartered prior to October 15, 1982, as a savings bank under State law or any savings association that acquired its principal assets from such an institution.

## Subpart E—Financial Subsidiaries of Insured State Nonmember Banks

SOURCE: 66 FR 1029, Jan. 5, 2001, unless otherwise noted.

### § 362.16 Purpose and scope.

(a) This subpart, along with the notice and application procedures in subpart G of part 303 of this chapter, implements section 46 of the Federal Deposit Insurance Act (12 U.S.C. 1831w) and requires that an insured state nonmember bank certify certain facts and file a notice with the FDIC before the insured state nonmember bank may

control or hold an interest in a financial subsidiary under section 46(a) of the Federal Deposit Insurance Act. This subpart also implements the statutory Community Reinvestment Act (CRA) (12 U.S.C. 2901 *et seq.*) requirement set forth in subsection (4)(1)(2) of the Bank Holding Company Act (12 U.S.C. 1843(1)(2)), which is applicable to state nonmember banks that commence new activities through a financial subsidiary or directly or indirectly acquire control of a company engaged in an activity under section 46(a).

(b) This subpart does not cover activities conducted other than “as principal”. For purposes of this subpart, activities conducted other than “as principal” are defined as activities conducted as agent for a customer, conducted in a brokerage, custodial, advisory, or administrative capacity, or conducted as trustee, or in any substantially similar capacity. For example, this subpart does not cover acting solely as agent for the sale of insurance, securities, real estate, or travel services; nor does it cover acting as trustee, providing personal financial planning advice, or safekeeping services.

**§ 362.17 Definitions.**

For the purposes of this subpart, the following definitions will apply:

(a) *Activity, company, control, insured depository institution, insured state bank, insured state nonmember bank and subsidiary* have the same meaning as provided in subpart A of this part.

(b) *Affiliate* has the same meaning provided in subpart B of this part.

(c) *Financial subsidiary* means any company that is controlled by one or more insured depository institutions other than:

(1) A subsidiary that only engages in activities that the state nonmember bank is permitted to engage in directly and that are conducted on the same terms and conditions that govern the conduct of the activities by the state nonmember bank; or

(2) A subsidiary that the state nonmember bank is specifically authorized to control by the express terms of a federal statute (other than section 46(a) of the Federal Deposit Insurance Act (12 U.S.C. 1831w)), and not by im-

plication or interpretation, such as the Bank Service Company Act (12 U.S.C. 1861 *et seq.*).

(d) *Tangible equity and Tier 2 capital* have the same meaning as set forth in part 325 of this chapter.

(e) *Well-managed* means:

(1) Unless otherwise determined in writing by the appropriate federal banking agency, the institution has received a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (or an equivalent rating under an equivalent rating system) in connection with the most recent state or federal examination or subsequent review of the depository institution and at least a rating of 2 for management, if such a rating is given; or

(2) In the case of any depository institution that has not been examined by its appropriate federal banking agency, the existence and use of managerial resources that the appropriate federal banking agency determines are satisfactory.

**§ 362.18 Financial subsidiaries of insured state nonmember banks.**

(a) “*As principal*” activities. An insured state nonmember bank may not obtain control of or hold an interest in a financial subsidiary that engages in activities as principal or commence any such new activity pursuant to section 46(a) of the Federal Deposit Insurance Act (12 U.S.C. 1831w) unless the insured state nonmember bank files a notice containing the information required in § 303.121(b) of this chapter and certifies that:

(1) The insured state nonmember bank is well-managed;

(2) The insured state nonmember bank and all of its insured depository institution affiliates are well-capitalized as defined in the appropriate capital regulation and guidance of each institution’s primary federal regulator; and

(3) The insured state nonmember bank will deduct the aggregate amount of its outstanding equity investment, including retained earnings, in all financial subsidiaries that engage in activities as principal pursuant to section 46(a) of the Federal Deposit Insurance Act (12 U.S.C. 1831w), from the